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In re Application of
Greenwood et al.

Serial No.: 09/834,101

Filed : April 12, 2001

For: Detachably Interconnected Handle
And Paint Brush

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Paper Number

: DECISION
: ON PETITION
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This is a decision on a petition under 37 CFR 1.181 filed October 15, 2003 requesting to have the species election requirement dated September 25, 2003 be reconsidered and withdrawn.

The Examiner in an Office Action dated September 25, 2003 required Applicant under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic. Applicant was advised that the reply to the Examiner's restriction requirement must include an election of the invention to be examined even though the requirement can be traversed (37 CFR 1.143)

37 CFR 1.143.Reconsideration of requirement.

If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving the reasons therefor. (See § 1.111). In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected.

As shown by the first sentence of 37 CFR 1.143, the traverse to a requirement must be complete as required by 37 CFR 1.111(b) which reads in part: " In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action." As noted in the second sentence of 37 CFR 1.143, a provisional election must be made even though the requirement is traversed.

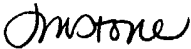
37 CFR 1.144.Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims

to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

Applicant has not filed a response to the Examiner's species election requirement nor has Applicant received a final requirement for restriction from the Examiner.

The petition is **DISMISSED**.



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